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Paper No. \_\_\_\_\_

IGOR TROITSKI  
853 ARROWHEAD TRAIL  
HENDERSON NV 89015

~~In re Application of  
Troitski  
Application No. 09/613,296  
Filed: July 10, 2000  
Docket No. N/a~~

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**OFFICE OF PETITIONS**

AND

**DECISION ON PETITION**

~~In re Application of  
Troitski  
Application No. 10/042,698  
Filed: December 5, 2001  
Docket No. n/a~~

This is a decision on the petition under 37 CFR 1.182 filed April 15, 2002, which is being treated as a petition under 37 CFR 1.53(e) requesting that the Continued Prosecution Application (CPA) filed under 37 CFR 1.53(d) December 5, 2001, based on prior application No. 09/613,296 be treated as an application filed under 37 CFR 1.53(b) and accorded a filing date of December 5, 2001

The petition is granted.

A request for a CPA based on prior application No. 09/613,296 was deposited on December 5, 2001. However, the issue fee was paid in the prior application on November 30, 2001. Since the issue fee was paid before the CPA was filed, the CPA was improper. See 37 CFR 1.53(d)(1)(ii)(A). Additionally since the prior application was filed on or after May 29, 2000, the provisions of 37 CFR 1.53(d) specifically exclude the prior application from CPA practice. See 37 CFR 1.53(d)(1)(i)(a). As such the improper CPA is to be treated as an RCE request. See MPEP 706.07(h)(V). However, as noted in MPEP 706.07(h)(V), under these circumstances, an applicant may file a petition under 37 CFR 1.53(e) and \$130 fee and request the improper CPA be treated as an application filed under 37 CFR 1.53(b). The petition is accompanied

by what is being construed as a true copy of the prior application papers.

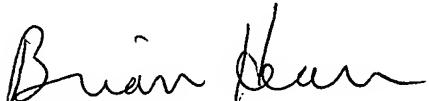
A new file wrapper has been prepared and assigned the application No. 10/042,698. All papers filed with the petition, and the CPA request, have been placed in this new file. The filing fees paid for the CPA in the parent parent case have been transferred to the new application.

The reference to the prior application in the CPA papers filed on December 5, 2001, has been construed as the timely request under 35 USC 120 and 37 CFR 1.78 for benefit of the prior application. Nevertheless, applicant must present at a later time an amendment to the first line of the specification which includes a claim for benefit of the prior application.

Application No. 09/613,296 is being forwarded to the Office of Publications for further processing into a patent.

Application No. 10/042,698 is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing as an application filed under 37 CFR 1.53(b), with a filing date of December 5, 2001, using the copy of the prior application specification, claims, drawings, and the declaration filed April 15, 2002. Any questions relating to the initial processing of this application should be addressed to OIPE at (703) 308-1202. OIPE will issue a filing receipt for this application due course.

Telephone inquiries related to this decision should be directed to the undersigned at (703) 305-1820.



Brian Hearn  
Senior Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy